

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of Whitney's Market,  
WIC Vendor No. W7001

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick, at 9:30 a.m. on March 4 and 5, 1997, at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota. The record closed on March 14, 1997, with the receipt of the final reply brief of the parties.

Wendy Willson Legge, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, appeared on behalf of the Minnesota Department of Health (Department). Phillip S. Resnick, Resnick & Seiler, 1925 Rand Tower, 527 Marquette Avenue South, Minneapolis, Minnesota 55402, appeared on behalf of the Appellant, Whitney's Market.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of Health shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Anne Barry, Commissioner of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440.

**STATEMENT OF ISSUES**

1. Whether Whitney's Market violated Minn. R. 4617.0085, subp. 2(B)(9), (C)(5), and (C)(8) and, if so, whether its vendor license in the Special Supplemental Food Program for Women, Infants and Children (WIC program) should be disqualified, and for what period of time such disqualification should be effective.

2. Whether the Department must issue a detailed notice of violation prior to issuing a notice of disqualification.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. Whitney's Market is a grocery store located at 201 West Lake Street in Minneapolis, Minnesota. The CEO, owner, and manager of Whitney's Market is Rex Lee Rogers. Exhibits 4 and 6. Several employees assist in the operation of the store, including operating the cash registers. There are two cash registers near the front door. Purchases are rung up on the registers by hand; Whitney's Market does not use scanners.

2. Whitney's Market has participated in the WIC program since August 17, 1992. It was issued WIC stamp number W7001. Exhibit 5. Rogers executed the most recent Retail Food Vendor Guarantee on August 6, 1995 (the Guarantee). Exhibit 4.

3. As an authorized vendor, Whitney's Market is authorized to accept WIC vouchers as payment for authorized foods. When a vendor receives a voucher as payment, the total price of the food purchased is noted on the voucher by the vendor. The vendor later imprints the Department-issued vendor number on the voucher with a stamp provided for that purpose. Once stamped, the voucher is deposited at the vendor's bank, as if it were a check. The voucher is paid through the WIC Program's authorized bank.

4. The Guarantee obligates Whitney's Market to comply with the WIC policies and procedures set out in federal regulations and state rules and the provisions of the Guarantee. Among the provisions in the Guarantee, the vendor is obligated to:

B. Provide only those supplemental foods which are identified on each WIC voucher, in the amount and brands specified on the voucher.  
The Vendor shall not provide cash, unauthorized food or other item in exchange for WIC vouchers.

....

D. Charge a price for the authorized foods purchased with WIC vouchers which is the current price, or less than the current price, charged to customers other than WIC participants.

....

G. Review the Minnesota WIC Program Authorization/Transfer of Certification Folder every time a voucher is signed by the WIC participant or proxy. Vendor shall not accept such a voucher if the folder is not presented or if the signature does not appear on the folder as an authorized signature.

....

J. Refuse to allow a participant to return food bought with a WIC voucher to obtain a cash refund, to exchange food for an unauthorized food in a different food category, or to exchange food for an unauthorized product.

Ex. 4 at 2-3. The Guarantee also sets forth the sanctions that will be applied in the form of disqualification for violations of the WIC program requirements, restating all the sanctions set forth in Minn. R. 4617.0085. Ex. 4 at 6-7.

5. Minn. R. 4617.0085 sets out the sanctions for vendors that fail to comply with the rules and vendor guarantees in the WIC program. The sanctions are periods of time that a vendor is disqualified from exchanging authorized food for WIC vouchers. The length of the disqualification period is determined by two factors, the specific act that constitutes a violation and whether the violation is a subsequent offense. Subsequent offenses double the disqualification period.

6. Minn. R. 4617.0085 was adopted November 14, 1988 (13 State Register 1190). The Statement of Need and Reasonableness (SONAR) prepared by the Department to support the adoption of the rule stated, in pertinent part:

Disqualification (not allowing a vendor to provide supplemental foods to participants) is a reasonable sanction for noncompliance with the rules because noncompliance can directly or indirectly defeat the purposes of the WIC program. For example, if a vendor allows a participant to return food bought with a voucher to obtain a cash refund, or to exchange authorized food for unauthorized food the participant could continue to eat a nutritionally incomplete diet, which in turn could affect the participants physical development or in the case of a pregnant woman participant the development of her embryo or fetus. Also, it is standard operating procedure for the commissioner to give a vendor prior warning that the vendor is out of compliance with the WIC program procedures. Included with the warning is information about how to comply or to correct the offense.

Under 7 CFR, section 246.12(k)(1)(i) the state agency may subject food vendors to sanctions in addition to or in lieu of, disqualification. The imposition of a civil money under this part is reasonable because it is consistent with the federal regulations.

....

Subp. 2. Length of disqualification. It is necessary and reasonable to limit the total length of disqualification of a vendor to three years because that limit is imposed by 7 CFR, section 246.12(k)(1)(ii).

Under 7 CFR, section 246.12(k)(1) the state agency is given the authority to “establish policies which determine the type and level of sanctions to be applied against food vendors, based upon the severity and nature of the program violations observed, and such other factors as the state agency determines appropriate, such as whether the violation represented repeated offenses over a period of time, whether the offenses represented vendor policy or whether the offenses represented the actions of an individual employee who did not understand program rules, and whether prior warning and an opportunity for correction was provided to the vendor.” The commissioner considered all of these factors when

developing the lengths of disqualification for a vendor who is not complying with WIC program rules and procedures. The lengths of disqualification under items A to F are reasonable, therefore, because they are consistent with 7 CFR, section 246.12(k)(1).

It is standard operating procedure that vendors receive a notice from the commissioner that a vendor has not complied or is not complying with WIC program rules and policies. Included in the notice is information regarding the evidence, the rules or policy that has been or is being violated, information on how to comply with the rule or policy and a statement that the vendor will be disqualified if the violation is not corrected. Such notice constitutes the prior warning and opportunity for correction criteria for applying sanctions that is suggested under 7 CFR, section 246.12 (k) (1). If a vendor continues the offense, the offense is documented and the vendor is disqualified. It is reasonable for items A to C to have disqualification periods for subsequent offenses that are twice as long as for first offenses because by the time of the second documented offense the vendor has had two explanations of how to correct the offense.

Also, if a vendor is unsure about how to comply with WIC program rules and procedures the vendor can consult with WIC program staff and receive training on request.

Exhibit 24, at 22-23.

7. Mary Rogness, WIC Compliance Specialist, received a report in the summer of 1996 that WIC vouchers were being exchanged for cash at Whitney's Market. On August 1, 1996, Rogness interviewed Rogers at the store, discussing the allegation of cash for vouchers, passing on a list of stolen voucher numbers, and reviewing the standards for proper acceptance of vouchers in a Vendor Questionnaire. Exhibit 6. Rogness also conducted an inventory of approved foods for availability and price. Exhibit 7.

8. A follow-up letter was sent to Rogers by Rogness on August 5, 1996. The letter discussed in detail the prohibitions against exchanging vouchers for cash as follows:

I told you that I received a report that your store provided cash in exchange for a WIC voucher. You assured me that this report was incorrect, and that you and your employees never give cash for vouchers. Please be advised, though, that if you or one of your employees *do* provide cash for one or more vouchers, your store would be disqualified from the WIC Program for 12 months for the first offense and 24 months for each subsequent offense (MN Rules 4617.0085, Subpart 2 (C) (5)). Please also note that disqualification from the WIC Program may result in withdrawal of authorization to participation in the Food Stamp Program per Section 278.1 (n) (1) of the Food Stamp Regulations. Since providing cash for a WIC voucher is also a violation of federal law, committing this type of violation could result in criminal prosecution. It is my understanding that

individuals committing fraud with WIC vouchers have in the past been charged with violating Title 18, United States Code Sections 287 and 2, and Title 42, United States Code Section 1760 (g).

Exhibit 8. The August 5, 1996, letter also stated:

We also discussed several other WIC program requirements, including the requirement that only the WIC-approved foods listed on a voucher be provided for that voucher, and that a price written on a voucher reflect only the item(s) purchased. Please discuss these issues with your cashiers and tell them they must follow all WIC program requirements at all times.  
Exhibit 8.

9. After the interview, Rogness made a request of the Office of the Attorney General (OAG) that a compliance visit be made at Whitney's Market by an OAG investigator. The investigator was requested to attempt to exchange a WIC voucher for cash. On September 12, 1996, an OAG investigator visited Whitney's Market in possession of WIC voucher number 40913464, which authorized the purchase of eight cans of infant formula. Rogers was behind the counter. The investigator selected eight cans of an approved infant formula and placed them on the counter. The investigator inquired of Rogers if he would accept a WIC voucher in exchange for cash or "buy back" the infant formula. Rogers said no, but that the investigator could purchase the formula with the voucher. The investigator left the store without completing the purchase.  
Exhibit 33.

10. After the September 12, 1996, compliance visit, Rogness received a report or reports that unauthorized foods were being exchanged for WIC vouchers at Whitney's Market. Rogness did not meet with Rogers to discuss this allegation or otherwise provide any specific notice regarding such violations.

11. On September 24, 1996, Rogness made an investigative request to the OAG to attempt to purchase unauthorized foods at Whitney's Market. Exhibit 9. Pursuant to the request, on October 3, 1996, another OAG Investigator entered Whitney's Market and attempted to purchase two boxes of Reese's Peanut Butter Puffs cereal, two cans of Hi-C (a sweetened drink), sixteen slices of Velveeta (a cheese product), eighteen ounces of Skippy Creamy Peanut Butter, and one gallon of skim milk with a WIC voucher. The cashier was an employee of Whitney's Market, named Read al-Shiade (phonetic). The investigator offered WIC voucher number 40913445 in payment for the items. The cashier reviewed the voucher and suggested that the investigator could also get eggs and pointed out where the eggs were located. Exhibit 10. One dozen eggs were added to the items purchased. The cashier hand-entered the amounts for the items into the cash register. The cashier filled in a total of \$24.72 on the WIC voucher and the investigator signed the voucher. Rogers was behind the counter at the other cash register and inquired of the cashier if the customer had signed the voucher. The cashier did not verify the signature on the voucher against the exemplars on the Certification Folder. The investigator took the items and left the store.

12. WIC voucher number 40913445 was processed in the normal course of business. That voucher bore the stamp number W7001, the deposit stamp of Whitney's

Market, and the amount paid on the voucher was \$24.72. Exhibit 15. The food authorized to be purchased with that voucher was 36 ounces of WIC-approved cereal, one gallon of milk, one pound of WIC-approved cheese, one dozen eggs, eighteen ounces of peanut butter, two cans (forty-six ounce size) of 100% fruit juice or an equivalent amount of frozen juice. *Id.*

13. Reeses Peanut Butter Puffs cereal, Hi-C, and Velveeta are not WIC-approved foods. They do not have the nutritional content of the WIC-approved foods and are insufficient to meet the prescribed dietary needs of WIC clients. The importance of providing only WIC-approved foods is repeatedly emphasized to WIC vendors.

14. At some time during October 1996, a Shelf Price Survey was completed by Whitney's Market and sent to the Department. Exhibit 20. This survey lists the availability and prices of WIC-approved foods at the store. The survey is required in the normal course of business under the Guarantee. The survey does not ask for prices of nonapproved foods.

15. A third investigative request was made of the OAG on October 23, 1996, again to attempt to purchase food items that were not WIC-approved. Exhibit 12. The suggested method of purchasing the items was nearly identical to the purchase carried out on October 3, 1996. The second investigator again went to Whitney's Market on November 1, 1996. She selected one gallon of milk, one can of Hi-C, one can of Hawaiian Punch (another sweetened drink), one fifteen ounce box of Frosted Flakes cereal, and sixteen slices of Velveeta and put these items in front of the cashier, who was the same individual running the cash register on the second compliance purchase. The investigator offered the clerk WIC voucher number 41616260 which authorized the purchase of 36 ounces of WIC-approved cereal, one gallon of milk, one pound of WIC-approved cheese, two dozen eggs, and two cans (forty-six ounce size) of 100% fruit juice or an equivalent amount of frozen juice. Exhibit 13.

16. After examining the voucher, the cashier advised the investigator that she was entitled to two dozen eggs. The investigator told the cashier that her kids didn't eat eggs. Exhibit 13. The cashier told her to go back and get another box of cereal. The investigator selected a fourteen ounce box of Lucky Charms cereal and added it to the items purchased. The cashier hand-entered the amounts for the items into the cash register. The cashier wrote \$21.62 on the voucher as the total price and asked the investigator to sign the voucher. She did so and left the store with her purchases. The cashier did not verify the signature on the voucher with the signatures on the Certification Folder.

17. WIC voucher number 41616260 was processed in the normal course of business. That voucher bore the stamp number W7001 and the amount paid on the voucher was \$21.62. Exhibit 15. The only food purchased by the investigator that was authorized to be purchased with that voucher was the milk. The cereal, sweetened drinks and Velveeta are not WIC-approved foods.

18. In mid-December, 1996, Rogers terminated the employment of Read al-Shiade. Rogers testified that he had received reports from other employees that al-Shiade was not conforming to store policies.

19. On December 30, 1996, Rogness went to Whitney's Market and examined the prices of foods purchased by the investigators. Exhibit 35. The only food item Rogness could not find a price for was cherry-flavored Hi-C. On February 10, 1997, Rogness returned to Whitney's market and purchased a can of cherry-flavored Hi-C for \$2.19. Exhibit 36. None of the WIC-approved items had changed prices between the August 1, 1996 Shelf Price Survey and December 30, 1996.

20. On February 11, 1997, Rogness recommended to Rick Chiat, WIC Vendor Supervisor, that the Whitney's Market be disqualified as a vendor for failure to verify signatures, providing unauthorized foods in exchange for a voucher, and charging the WIC program for food not provided in exchange for a voucher. Exhibit 16.

21. To determine that Whitney's Market should be disqualified for charging the WIC program for foods not purchased on the second compliance purchase, Rogness totaled the prepriced foods (Velveeta at \$3.29, peanut butter at \$2.99, and two boxes of cereal at \$4.19), added the price of milk and eggs from the Shelf Price Survey (milk at \$2.99 and eggs at \$.99) and the prices obtained from Rogness' visit in December for Hi-C (\$2.19). The total arrived at by Rogness for the expected price of the food obtained in the second compliance purchase is \$23.02. That is \$1.70 less than the \$24.72 entered on Voucher 40913445 and paid to Whitney's Market. The difference between the price marked on the Velveeta, \$3.29, and the Shelf Price Survey price of one pound of WIC-approved cheese, \$4.99, is also \$1.70.

22. Rogness calculated the price of authorized food obtained from the third compliance visit for milk (at \$2.99) from the Shelf Price Survey and her store visit on December 30, 1996. The cost of Lucky Charms cereal (at \$4.19) and Frosted Flakes (at \$3.69) were taken from the preprinted labels on the items. Exhibit 13. No price was marked on the Velveeta or noted in the investigator's report, so Rogness used the price from the prior purchase (\$3.29) in calculating the total expected price of the food. The price of the Hi-C and Hawaiian Punch (both at \$2.19) was taken from Rogness' visits to Whitney's Market in December and February. The total expected price arrived at by Rogness for food obtained in the third compliance purchase is \$18.54. That is \$3.08 less than the \$21.62 entered on Voucher 41616260 and paid to Whitney's Market.

23. Rogness sent Rogers a letter stating that Whitney's Market had violated WIC rules prohibiting exchanging nonauthorized foods for vouchers, not checking the signature of a participant, and charging the WIC program for foods not provided to the customer. Exhibit 17. The letter advised that the vendor was disqualified from participation in the WIC program for a period of three years, beginning on February 27, 1997. *Id.* The letter advised Rogers that the WIC stamp issued to Whitney's Market must be returned to the Department by February 27, 1997. The letter stated that there was a 30-day period to appeal the disqualification and request a hearing.

24. Whitney's Market requested an appeal on February 18, 1997. Exhibit 18. Rogness advised Whitney's Market that the effective date of the disqualification was changed to March 10, 1997. Exhibit 19.

25. A Notice of and Order for Hearing in this matter was issued by the Commissioner of Health on February 25, 1997. The Notice set this matter on for hearing on March 4, 1997.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Commissioner of the Minnesota Department of Health have jurisdiction in this matter pursuant to Minn. Stat. § 14.50, 7 C.F.R. § 246.18, and Minn. R. 4617.0100, subp. 1. The Notice of Hearing was proper in all respects and the Department has complied with all other substantive and procedural requirements of law or rule.

2. The Department has the burden of proof to demonstrate the facts at issue by a preponderance of the evidence. Minn. R. 1400.7300, subp. 5; see, also, Minn. R. 4617.0100, subp. 3.

3. Minn. R. 4617.0085, subp. 2B. provides, in relevant part:

Disqualification is six months for the first offense and 12 months for each subsequent events for a vendor who:

....

(9) Fails to verify that a voucher is redeemed only by a person on a Minnesota WIC program authorization or transfer of certification card;

....

4. The Department has shown by a preponderance of the evidence that Whitney's Market did not verify the signature of a WIC customer in violation of Minn. R. 4617.0085, subp. 2B(9) on two occasions, namely, October 3, 1996, and November 1, 1996.

Minn. R. 4617.0085, subp. 2C provides, in pertinent part:

Disqualification is 12 months for the first offense and 24 months for the subsequent offense for a vendor who:

....

(5) Exchanges cash for unauthorized food or other items for a voucher;

(6) Charges the WIC program more money for an authorized food than the vendor's usual and customary charge for that food;

....

(8) Charges the WIC program for foods not received by a participant.

5. The Department has shown by a preponderance of the evidence that Whitney's Market exchanged unauthorized food for WIC vouchers in violation of Minn. R. 4617.0085C(5) on two occasions, namely, October 3, 1996, and November 1, 1996.



6. The Department has not shown by a preponderance of the evidence that Whitney's Market charged the WIC program for foods not received by a participant. The evidence showed only that on both occasions Whitney's Market charged the WIC program more in total than the marked or otherwise identified prices of the items purchased. It appears most likely that Whitney's Market charged the WIC program more than its usual and customary charge for the unauthorized food items, but that is not a violation of the cited provision of Minn. R. 4617.0085 or any other provision of that rule. It is not charging for foods not received under subp. 2C(8) and it is not charging more for an authorized food item than the usual and customary charge under subp. 2C(6).

7. The standard operation procedure followed by the Department in disqualifying vendors gives the vendor prior notice of the violation and an opportunity to correct the violation.

8. The Department did not follow its standard operating procedure in disqualifying Whitney's Market. The method used to give prior notice to the vendor was inadequate to give Whitney's Market any notice that violations regarding nonauthorized foods, incorrect voucher totals, or failure to confirm the identity of participants were occurring. The notification method used by the Department gave Whitney's Market no opportunity to correct these violations.

9. The failure of the Department to follow its standard operating procedure of giving prior notice invalidates the disqualification issued to Whitney's Market.

### **RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Health REVERSE the disqualification of Whitney's Market from the WIC program.

Dated this \_\_\_\_ day of April, 1997.

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STEVE M. MIHALCHICK  
Administrative Law Judge

### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, No Transcript Prepared.

### **MEMORANDUM**

The evidence in this matter is quite clear that Whitney's Market had a vendor policy of exchanging unauthorized foods for WIC vouchers. The Department has demonstrated that it did so on the two occasions in this matter. And it appears that the cashier was trained to ring up prices for the unauthorized items that matched the prices of WIC-approved foods, knew the program well enough to inspect the vouchers and

advise the investigator that she was entitled to additional food items and to write in the amount before obtaining the investigator's signature. The cashier was well aware of the WIC procedures used at Whitney's Market. There is very little reason to believe that he was not aware that most of the items being purchased by the investigator were not WIC approved. On both investigations the total amount he rang up totaled more than the marked or otherwise indicated prices for the food items and on both occasions the cashier did not bother to verify the investigator's signature against the authorization folder. On the one occasion that the owner was nearby, he only checked to make sure that the cashier had obtained a signature, he didn't ask whether the cashier had verified the signature. Thus, it appears that the actions of the cashier on the two days in question were consistent with Whitney's Market's policy with regard to WIC vouchers. The violations are serious. They deprive WIC participants of the specific food that has been prescribed for them for their health and allow the vendor to make sales of foods that would not otherwise have been purchased. But for the fact that the Department failed to follow its standard operating procedure with regard to notifying the vendor, the Administrative Law Judge would easily recommend imposition of disqualification for two original offenses of not verifying signatures (six months each) and two original offenses for exchanging unauthorized food for vouchers (12 months each), for a total of 36 months.

The Department's failure to follow the standard operating procedure upon which Minn. R. 4617.0085 was justified in the SONAR is very troubling. The SONAR very clearly states that the Department will give a detailed specific notice of violation and allow a vendor to come into compliance prior to issuing a notice of disqualification. Moreover, it states that another detailed specific notice and opportunity for correction will be given prior to issuing a notice of disqualification for a second offense. Now the Department claims that the notice requirement does not apply or, that if it does, a vague admonishment to comply with the rules is sufficient notice.

The Department argues that because its standard operating procedure is a policy that has not been formally adopted as a rule, it cannot be enforced. Moreover, the Department argues that the rule is clear on its face and there is no room for interpretation. The Department cites a number of administrative law judge and commissioner decisions that have interpreted the rule as not requiring a notice of violation prior to issuing a notice of disqualification and that have interpreted the term "subsequent offense" as not requiring any intervening notice of violation.

While Minn. R. 4617.0085 is clear on its face as to what sanctions shall be imposed for what violations, it is silent as to the steps to be taken before imposition of a sanction. Thus, the rules are ambiguous and require interpretation. That much is made obvious by the SONAR itself in the detail and length of the explanation of the notice procedure.

The previous decisions of administrative law judges, and commissioners, that upheld disqualifications without prior notices of violation, and disqualifications for subsequent offenses without two notices of violation, were based upon reading only the language of Minn. R. 4617.0085. Those ALJs, and commissioners, were not advised of and did not discuss the statements made in the SONAR supporting the rule. Moreover, the fact that Minn. R. 4617.0085 may be interpreted as not requiring a notice of violation

in every instance is further demonstrated by In the Matter of Adams Food, Inc., Commissioner's Order Feb. 13, 1995. At the end of the Memorandum attached to the Order, the Commissioner takes notice of four WIC cases involving minor offenses for which disqualification was not imposed. The Commissioner distinguished those on the basis of the seriousness of the violation, but the fact remains that the requirement for imposing disqualification is not absolute.

The Administrative Law Judge is not suggesting that disqualification for a serious first time offense is never reasonable. On the contrary, Whitney's Market's policy of providing unauthorized foods for WIC vouchers demonstrated in this case would justify imposition of some period of disqualification without prior notice. But that was not the policy of the Department upon which its disqualification rule is based.

The question becomes whether the Department's change in policy from that expressed in the SONAR accompanying adoption of the rule is a permissible interpretation of its rule or the improper promulgation of a new rule. Generally, if the agency's interpretation of a rule corresponds with its plain meaning, or if the rule is ambiguous and the agency interpretation is a long-standing one, the agency is not deemed to have promulgated a new rule. ***Cable Communications Board v. Nor-West Cable Communications Partnership***, 356 N.W.2d 658, 667 (Minn. 1984). Since the Department's new policy of not requiring prior notice is contrary to that expressed in the SONAR, the new policy does not represent a long-standing interpretation of the Department's rule. Thus, as Whitney's Market argues, the Department's new policy constitutes improper rulemaking and cannot be enforced. Once a state agency adopts a rule, it has no authority to formulate conflicting or limiting policy on a case-by-case basis. ***Lawful Gambling License of Eagles Aerie v. State Lawful Gambling Control Board***, 533 N.W.2d 874, 876 (Minn. App. 1995).

The Department asserted that the fourth paragraph in the letter of August 5, 1996, is the appropriate warning called for in the process of documenting violations that result in disqualification. Again, that paragraph reads:

We also discussed several other WIC program requirements, including the requirement that only the WIC-approved foods listed on a voucher be provided for that voucher, and that a price written on a voucher reflect only the item(s) purchased. Please discuss these issues with your cashiers and tell them they must follow all WIC program requirements at all times.

Whitney's Market asserts that the language in the fourth paragraph is not sufficiently specific to constitute a warning of a specific violation. The Administrative Law Judge agrees. There are no details given; it amounts to saying, "Obey the rules."

The Department also maintained that the information passed on by the Compliance Specialist in completing the Vendor Questionnaire constitutes notice of potential violations. The Vendor Questionnaire includes the following question:

What do you do if someone with a WIC voucher wants to purchase an item which is not WIC-approved?

There is nothing in the Vendor Questionnaire which states that there is evidence or there have been allegations that nonauthorized foods are being obtained from the

vendor's store. Giving a vendor an opportunity to correct a violation requires the Department to inform a vendor of the specific problem, not conduct a generic survey of standard policies. The notice does not meet the SONAR's listed requirements.

S.M.M.